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Plaintiff in Pro Se

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,

Plaintiffs

v.

ROWELL RANCH RODEO, INC., et al.,

Defendants

Case No. 3:23-cv-01652-VC

**PLAINTIFFS' MOTION *IN LIMINE* NO.
4 TO EXCLUDE EVIDENCE
CHARACTERIZING PLAINTIFFS AS
ANYTHING OTHER THAN ANIMAL
RIGHTS PROTESTERS**

Trial date: October 21, 2024
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Courtroom: 5, 17th Floor

III. The Court should preclude Defendants from offering testimony or evidence characterizing Plaintiffs as anything other than Activists or Animal Rights Protesters.

Evidence characterizing Plaintiffs as other than Animal Rights Protesters or seeking to demonstrate that Plaintiffs were motivated by anything other than their concern for animal rights would lack probity to outweigh the prejudice to Plaintiffs. Fed. R. Evid. 403. Plaintiffs ask the Court to preclude Defendants from offering any facts or argument characterizing Plaintiffs as anything other than Animal Rights Protesters. The relevance of any facts indicating that Plaintiffs' motivation in peacefully protesting at Rowell Ranch Rodeo was other than to advance animal rights is not relevant to the legal claims at issue in this case. Fed. R. Evid. 401, 402.

Under the Bane Act, Plaintiffs need not prove that Defendants' conduct toward them was because of their Animal Rights affiliation. *See* Cal. Civ. Code, § 52.1. Instead, it is sufficient for Plaintiffs to demonstrate Defendants' threats, intimidation, or coercion were carried out with intent to interfere with a constitutional right. *Id.*; *See* Order, p. 2.

Plaintiffs' Ralph Act claims against Defendant Rowell Ranch Rodeo require that Plaintiffs set forth evidence that Defendants' conduct toward them, in the form of violence, or intimidation by threat of violence, was committed against them "because of political affiliation." Cal. Civ. Code, § 51.7. This Court determined that "there remains a dispute of fact remaining the issue of whether Rowell Ranch Rodeo's Gary Houts's act of violence (hitting Cuiello with the cart) and threat of violence (calling the police) were because of plaintiffs' political affiliation." Order, p. 5. Relevant evidence must therefore focus on Plaintiffs' political affiliation as Animal Rights Protesters and Houts's perception of Plaintiffs at the rodeo during the events at issue. Cal. Civ. Code, § 51.7.

Any evidence concerning Plaintiffs' intent or motivation in attending Rowell Ranch Rodeo aside from peacefully advocating on behalf of animals should be precluded as it is more prejudicial than probative. Fed. R. Evid 401. It is prejudicial because there is a danger of confusing the issues, which, as framed by the Court, is whether Defendant Rowell Ranch Rodeo's Gary Houts's actions were because of Plaintiffs' political affiliation. Order, p. 5; Cal. Civ. Code, § 51.7.

1 Plaintiffs have set forth evidence of their political affiliation as Animal Rights protesters,
2 and the Court has stated that Plaintiffs attended the rodeo to protest animal cruelty. Order, p. 1. As
3 Animal Rights Protesters, Plaintiffs' speech and association focus on the abuse of animals in rodeos
4 as well as other "entertainment" entities. *See* Dkt. 83-4, ¶¶ 3,4, Declaration of Deniz Bolbol ISO
5 Plaintiffs' Joint Mtn for Partial SJ. Evidence.

6 This Court should preclude any circumstantial evidence related to Plaintiffs' motivations in
7 protesting at the Rodeo outside from their intent to advocate on behalf of animal rights. Anticipated
8 evidence may include allegations that Plaintiffs somehow seek to "benefit" from the incidents. Dkt.
9 116, p. 5:8-10 (Rowell Ranch Rodeo Cross-Mot. for SJ). This prejudicial evidence is not helpful to
10 establishing liability under the Ralph Act claims. Fed. R. Evid. 403.

11 Unlike the Ralph Act, Plaintiffs' Bane Act claims do not require a showing that Defendants'
12 conduct was because of their political affiliation. In fact, the Bane Act claim requires "threats,
13 intimidation, or coercion" carried out with the intent to interfere with a constitutional right. Order,
14 p. 2; Cal. Civ. Code, § 52.1. Additionally, evidence characterizing Plaintiffs as anything other than
15 Animal Rights protesters is irrelevant to the elements of Plaintiffs' assault and battery claims
16 against Defendant Rowell Ranch Rodeo. *See* Order, p. 6 (analyzing the elements of assault and
17 battery and holding that liability must be determined by a jury).

18 Accordingly, any evidence that characterizes Plaintiffs as anything other than Animal Rights
19 Protestors should be precluded from trial as it relates to the Ralph Act because it is more
20 prejudicial than probative and is likely to mislead the jury. Fed. R. Evid. 401, 402, and 403. Any
21 such evidence should also be precluded because it is irrelevant to the Bane Act claims and assault
22 and battery claims, confuses the issues, and will potentially mislead the jury. Fed. R. Evid. 401,
23 402, and 403.

24 **IV. Conclusion**

25 For the foregoing reasons Plaintiffs respectfully request that this Court grant Plaintiffs'
26 motion *in limine*.

Respectfully submitted,

DATED: September 10, 2024

/s/ Lily A. Rivo
Jessica Blome
Lily A. Rivo
GREENFIRE LAW, PC
Attorney for Plaintiff Deniz Bolbol

DATED: September 10, 2024

Joseph P. CuvIELLO
JOSEPH P. CUVIELLO
Plaintiff In Pro Se

PROOF OF SERVICE

I am employed in the County of Alameda. My business address is 2748 Adeline Street, Suite A, Berkeley California 94703. I am over the age of 18 years and not a party to the above-entitled action. Document(s) served:

**PLAINTIFFS' MOTION IN LIMINE NO. 4. TO EXCLUDE EVIDENCE
CHARACTERIZING PLAINTIFFS AS ANYTHING OTHER THAN ANIMAL
RIGHTS PROTESTERS**

On September 10, 2024, I served the foregoing document(s) on the parties in this action, located on the attached service list as designated below:

- () By First Class Mail, where indicated: Deposited the above documents in a sealed envelope with the United States Postal Service, with the postage fully paid.
- () By Personal Service: I personally delivered each in a sealed envelope to the office of the address on the date last written below.
- () By Overnight Mail: I caused each to be placed in a sealed envelope and placed the same in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- (X) By Electronic Transmission: Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 20, 2024, in Berkeley, California.


Lily Rivo

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO and DENIZ
 BOLBOL, individually,

Plaintiffs,

v.

ROWELL RANCH RODEO, INC.;
 HAYWARD AREA RECREATION AND
 PARK DISTRICT; HAYWARD AREA
 RECREATION AND PARK DISTRICT
 PUBLIC SAFETY MANAGER/RANGER
 KEVIN HART; ALAMEDA COUNTY
 SHERIFF'S OFFICE; ALAMEDA COUNTY
 DEPUTY SHERIFF JOSHUA MAYFIELD;
 and DOES 1 and 2, in their individual and
 official capacities, jointly and severally,

Defendants.

Case No. 3:23-cv-01652-VC

**DEFENDANT COUNTY OF
 ALAMEDA'S OPPOSITION TO
 PLAINTIFFS' MOTION *IN LIMINE*
 NO. 4 TO EXCLUDE EVIDENCE
 CHARACTERIZING PLAINTIFFS AS
 ANYTHING OTHER THAN ANIMAL
 RIGHTS PROTESTERS**

Action Filed: April 6, 2023
 Trial Date: October 21, 2024

I. INTRODUCTION

Defendants County of Alameda and Dep. Joshua Mayfield ("the County Defendants") agree to use neutral language such as "demonstrators" or "protestors" to describe plaintiffs generally. The County does not agree, however, that they must characterize plaintiffs as "animal rights protestors" as that term will be positively charged for most if not all of the jury members.

Despite its narrow title, however, plaintiffs' motion also seeks to exclude highly relevant evidence, such as that that they were "anything other than Animal Rights Protesters," that "they were motivated by anything other than their concern for animal rights," that they sought to "benefit" from the demonstrations, and about their "prior protests" and resulting lawsuits. MIL No. 4 at 2:5-6, 3:2-9, and 4:8. They further seek a broad order excluding "any circumstantial evidence" of these matters. *Id.* at 4:6.

II. LEGAL DISCUSSION

A. The Bias of Witnesses on Important Matters is Always Relevant

"Evidence is relevant to a matter of consequence to the determination of the case if it has a mere tendency to impeach a witness' credibility by a showing of bias" *U.S. v. Hankey*, 203 F.3d 1160, 1171 (9th Cir. 2000). Evidence regarding "the credibility of a witness is of consequence to the determination of the action." *Ibid.* "The point of a bias inquiry is to expose to the jury the witness' special motive to lie ... by revealing facts such as interest in the outcome of the trial." *Ibid.* The money that a witness may receive as a result of his or her testimony is relevant to the witness's credibility. See, e.g., *Continental Circuits LLC v. Intel Corp.*, 435 F.Supp.3d 1014 ("to the extent persons affiliated with Plaintiff may receive substantial compensation through the litigation, that fact bears on their credibility"); *Wise v. Southern Tier Express, Inc.*, 2017 WL 11488517 (D. Nev.) at 1 (evidence that plaintiffs' witnesses held liens and of experts' compensation is relevant to bias).

Bias may, however, result from more than just the expectation of profit resulting from one's testimony. Bias includes:

the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' ... dislike of a party

U.S. v. Hankey, supra, 203 F.3d at 171 (emphasis added). Further, evidence of prior lawsuits is admissible if it is relevant to something other than plaintiff's tendency to sue. *Chopourian v. Catholic Healthcare West*, 2011 WL 6396550 (E.D. Cal.) at *3, citing *Gastineau v. Fleet Mortg. Co.*, 137 F.3d 490, 496 (7th Cir. 1998).

1 **A. The Relevant Evidence Plaintiffs Wish to Exclude**

2 The exceedingly broad scope of this MIL goes far beyond the characterization of plaintiffs
3 as “animal rights protestors” and would include the following evidence directly relevant to
4 plaintiffs’ bias and thus the credibility of their testimony:

5 Approximately one minute after the deputies had arrived at 5:57 pm, while Deps.
6 Mayfield and Christian Campbell were simply walking towards plaintiffs, *and before any words*
7 *had even been spoken between them and plaintiffs*, Ms. Bolbol observed the deputies and
8 remarked, “We got a lawsuit. Here we go.” Transcript of Plaintiffs’ Videos at 13:8. Dep.
9 Campbell’s very first words to plaintiffs, however, were very polite and clearly indicated he and
10 Dep. Mayfield had no problem with the demonstrators: “Hey, so were just here with the Sheriff’s
11 Office obviously. We just wanted to say hello and, you know, let you know basically were going
12 to be hanging out here. It’s free speech, we totally get that. That’s totally cool.... Basically all we
13 are here, you know, play nice.” Id. at 13-25. This shows that plaintiffs were already filtering the
14 deputies’ obviously neutral and friendly words and conduct through their preconceived notions of
15 how law enforcement will *always* behave when encountering a political protest. Plaintiffs’ “filter”
16 colored their perception and understanding of the deputies conduct throughout the evening, and is
17 thus relevant to their bias and the credibility of their testimony.

18 Throughout the evening, plaintiffs also commented that if the deputies violated their rights
19 by arresting them, they could be sued “for damages.” Id. at 36:18-19; 44:10-11, and 53:19-22.
20 Mr. CuvIELLO even specifically threatened Dep. Mayfield with a lawsuit: “I know you because
21 I’ve met cops like you so many times. I filed lawsuits against cops like you. I know you like the
22 back of my hand.” He even warned him, “Look up Six Flags. I just won a lawsuit.” Ms. Bolbol
23 apparently had dreams of grandeur, telling another demonstrator that they could win “hundreds of
24 thousands of dollars” if the deputies arrested them Id. at 20:21-25. This dream, however, was
25 apparently grounded in fact: one northern district federal court noted plaintiff Bolbol and
26 CuvIELLO’s “substantial past settlements and affirmative litigation history” as early as 2013. *Bolbol*
27 *v. Feld Entertainment, Inc.*, 2013 WL 3808023 (N.D. Cal.) at *1. Throughout the evening,
28

1 plaintiffs appear to be deliberately goading Dep. Mayfield into making even a small misstep, for
 2 which they could sue him, both as a way of punishing him, and of recovering monetary damages.
 3 At no time, did plaintiffs change their conduct based on Dep. Mayfield's statements and/or
 4 conduct towards them; rather, they continued their protests and repeatedly said that if he had
 5 arrested them, they would have filed a lawsuit. Id. at 13:8, 36:6-7, 42:12, 44:10, and 435:17-19.

6 This same encounter again shows Mr. CuvIELLO perceiving Dep. Mayfield, not based on a
 7 reasonable and objective assessment of his statement and/or conduct, but on what other law
 8 enforcement personnel may have done ("I know you like the back of my hand" even though they
 9 had never meet before). Another telling example: when Dep. Mayfield asked Ms. Bolbol, "Can
 10 you just do me one favor and *scoot this way* a little bit so you're not blocking the bathroom and
 11 you're not blocking this walkway," she aggressively responded, "You've just got a hard-on for
 12 us, don't you." Id. at 46:9-16.¹ The stark contrast in tone between Dep. Mayfield's use of the term
 13 "scoot" and Ms. Bolbol's aggressive and highly sexualized response aptly illustrates how
 14 plaintiffs' bias colored their understanding (and will thus impact their testimony at trial) of Dep.
 15 Mayfield's words and actions, while also demonstrating that they suffered no harm as a result of
 16 Dep. Mayfield's conduct or statements that day. Rather, it shows plaintiffs' complete
 17 incomprehension of what Dep. Mayfield was working to accomplish because of their negative
 18 experience at prior protests: in short, respecting the demonstrators' free speech, while also
 19 maintaining the rodeo patrons' right to free access to the arena.

20 Plaintiffs wish to exclude this sort of evidence because it will complicate the image they
 21 want to project to the jury of themselves as nothing but sincere animal rights protestors. The
 22 County Defendants, however, intend to present this evidence, not to convince the jury that
 23 plaintiffs are "bad people," but because it sheds light on their bias and it also goes to the issue of
 24 whether they actually suffered "harm" as a result of Dep. Mayfield's statements or conduct.²

25
 26 ¹ Ms. Bolbol accused Dep. Mayfield of having a "hard-on" for the demonstrators on another
 27 occasion, and of calling him "bullish" three times (even correcting him when he assumed she had
 28 merely used the term "bully.")

² To succeed on their Bain Act claims, plaintiffs must establish that they were harmed and that
 Dep. Mayfields' conduct was a substantial factor in causing their harm. CACI 3066.

1 Plaintiffs somehow *knew* that he was “like” other cops that they had “sued.” Because of
 2 their apparently unfortunate experiences at other demonstrations, which resulted in plaintiffs
 3 filing lawsuits on multiple occasions, plaintiffs *immediately* took a deep dislike of Dep. Mayfield,
 4 long before there had been any interactions with him that could have formed a reasonable basis
 5 for their dislike. The evidence clearly shows that for the rest of the evening, they misunderstood
 6 his words and conduct because of the filter they perceived him through (unlike Dep. Campbell,
 7 “the white guy” in Ms. Bolbol’s words) and, equally important, that they suffered no harm as a
 8 result of Dep. Mayfield statements and/or conduct. Plaintiffs’ misunderstanding is relevant
 9 because it will also slant and distort their testimony at trial (the jury “is entitled to assess all
 10 evidence which might bear on the accuracy and truth of a witness’ testimony.” *Hankey* at 171)
 11 and evidence as to whether they actually suffered harm are elements that they must prove to
 12 establish their claim against Dep. Mayfield and the County of Alameda.

13 Plaintiffs’ remarks throughout the demonstration about the lawsuits they could file and the
 14 “hundreds of thousands of dollars” they could be awarded in damages is also relevant to show
 15 bias. Further, it is not just plaintiffs’ financial interest in suing that is relevant. As the saying goes,
 16 “the process is the punishment.” A lawsuit against Dep. Mayfield appears to have been a means
 17 for plaintiffs to punish this Deputy for whom they had such an immediate, visceral dislike.

18 **III. CONCLUSION**

19 Plaintiffs’ Motion in Limine No. 4 must be denied to the extent it asks for the exclusion of
 20 relevant evidence regarding plaintiffs’ bias and whether they actually suffered harm as a result of
 21 Dep. Mayfield’s words and/or conduct.

22 Dated: September 17, 2024

FENNEMORE WENDEL

24 By: /s/ Marc Brainich

25 William B. Rowell
 26 Marc Brainich
 27 Attorneys for Defendants
 28 County of Alameda and Alameda County
 Deputy Sheriff Joshua Mayfield

CERTIFICATE OF SERVICE

Joseph P. CuvIELLO, et al. v. Rowell Ranch Rodeo, Inc., et al.
USDC – Northern District of California, Case No. 3:23-cv-01652-VC

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607.

On September 17, 2024, I served true copies of the following document(s) described as **DEFENDANT COUNTY OF ALAMEDA’S OPPOSITION TO PLAINTIFFS’ MOTION IN LIMINE NO. 4 TO EXCLUDE EVIDENCE CHARACTERIZING PLAINTIFFS AS ANYTHING OTHER THAN ANIMAL RIGHTS PROTESTERS** on the interested parties in this action as follows:

Please see attached Service List.

BY EMAIL OR ELECTRONIC TRANSMISSION: By causing the document(s) listed above to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 17, 2024, at Oakland, California.

/s/ Lena S. Mason

Lena S. Mason

SERVICE LIST

Joseph P. CuvIELlo, et al. v. Rowell Ranch Rodeo, Inc., et al.
USDC – Northern District of California, Case No. 3:23-cv-01652-VC

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